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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

9 CLARENCE J. FAULKNER,

10 Plaintiff,

11 v.

12 SHANE MAITLAND, et al.,

13 Defendants.
14

NO. C08-5038RJB/JKA

ORDER ADOPTING
REPORT AND
RECOMMENDATION
AND DENYING
PLAINTIFF'S MOTION
TO APPOINT COUNSEL
AND ORDERING
DISMISSAL

15 This matter comes before the Court on the Report and Recommendation (Dkt. 35) of the
16 Honorable J. Kelley Arnold, United States Magistrate Judge, and Plaintiff's Motion for
17 Appointment of Counsel (Dkt. 39). The Court has considered the Report and Recommendation
18 (Dkt. 35); Plaintiff's Objections to the Report and Recommendation (Dkt. 38); Defendants'
19 Response to Plaintiff's Objections (Dkt. 40); Plaintiff's Motion for Appointment of Counsel (Dkt.
20 39); Defendants' Response to Plaintiff's Motion to Appoint Counsel (Dkt. 41); and the remainder
21 of the file herein.

22 Plaintiff filed a Complaint on February 7, 2008. Dkt. 5. In his complaint, Plaintiff, an
23 inmate, alleges that his right to receive and send mail and his right to due process were violated.
24 Plaintiff further alleges that he has been continually harassed and intimidated for his attempts to
25 seek informal resolution of his mail-related concerns.

26 Plaintiff filed his first Motion to Appoint Counsel (Dkt. 16.) on June 3, 2008. The motion
27 was denied on June 11, 2008. Dkt. 19. On October 15, 2008, Defendants filed a Motion for
28

1 Summary Judgment. Dkt. 32. Plaintiff filed his Response (Dkt. 33) on October 31, 2008, and
2 Defendants filed their Reply (Dkt. 34) on November 6, 2008.

3 On November 20, 2008, Magistrate Judge J. Kelley Arnold issued a Report and
4 Recommendation, which concluded that Plaintiff's claims cannot survive summary judgment.
5 Dkt. 35. Plaintiff filed his Objections to the Report and Recommendation on December 2, 2008.
6 Dkt. 38. Also on December 2, 2008, Plaintiff filed a second Motion to Appoint Counsel. Dkt.
7 39. Defendants filed their Response to Plaintiff's Objections to Judge Arnold's Report and
8 Recommendation on December 15, 2008. Dkt. 40. The same day, Defendants also filed their
9 Response to Plaintiff's Motion to Appoint Counsel. Dkt. 41.


10 Plaintiff's second Motion to Appoint Counsel (Dkt. 39) is substantively the same as his
11 first Motion to Appoint Counsel (Dkt. 16). For the reasons given in Judge Arnold's Order
12 denying Plaintiff's First Motion to Appoint Counsel (Dkt. 19), Plaintiff's second Motion to
13 Appoint Counsel should be denied.

14 The Court, having reviewed the file and the pertinent documents, concurs with the
15 reasoning and findings of Judge Arnold's Report and Recommendation. The issues that Plaintiff
16 raised in his objections fail to rebut Judge Arnold's conclusion that Plaintiff's claims cannot
17 survive summary judgment.

18 Therefore, the Court does hereby find and **ORDER**:

- 19 (1) Plaintiff's Motion to Appoint Counsel (Dkt. 39) is **DENIED**;
20 (2) The Court adopts the Report and Recommendation (Dkt. 35); and
21 (3) Defendants' Motion for Summary Judgment (Dkt. 32) is **GRANTED**. Plaintiff's
22 Complaint is **DISMISSED WITH PREJUDICE**.
23 (4) The Clerk is directed to send copies of this Order to Plaintiff, Counsel for
24 Defendants, and to the Hon. J. Kelley Arnold.

25 DATED this 31st day of December, 2008.

26 
27 ROBERT J. BRYAN
28 United States District Judge